ch. 238, § 31. *Held*, that no injunction will be granted. *Baxter Tel. Co.* v. *Cherokee County Mut. Tel. Ass'n*, 146 Pac. 324 (Kan.).

Where a public franchise is set up as a defense to *primâ facie* tortious conduct, its validity may be challenged by the plaintiff, even though a private individual. *Smith* v. *Warden*, 86 Mo. 382; *Vredenburgh* v. *Behan*, 33 La. Ann. 627. But in the principal case the defendant's act in stringing competing wires was not *per se* tortious, for the plaintiff's franchise was not exclusive. As the mere usurpation of a public privilege could not without more constitute a private wrong to the plaintiff, the result seems clearly correct. *Jersey City Gas Light Co.* v. *Consumers' Gas Co.*, 40 N. J. Eq. 427; *Coffeyville Gas, etc. Co.* v. *Citizens' Natural Gas, etc. Co.*, 55 Kan. 173, 40 Pac. 326. *Cf. Cope* v. *District Fair Ass'n*, 99 Ill. 489.

FRAUDULENT CONVEYANCES — TRANSFERS FOR VALUE — CONVEYANCE IN SATISFACTION OF UNENFORCEABLE EXPRESS TRUST. — A testator was induced not to change a will leaving property to A, by A's promise to give half the property to B. A later transferred to B land equal in value to half of the property received under the will. This transfer made A insolvent, and his creditors bring this action to have it set aside as fraudulent. *Held*, that the conveyance will not be set aside. *Walter Farrington Tiling Co.* v. *Hazen*, 151 N. Y. Supp. 523 (App. Div.)

A *bonâ fide* conveyance by an insolvent debtor in preference of a creditor who has an enforceable legal or equitable claim against him cannot be set aside as in fraud of creditors. WAIT, FRAUDULENT CONVEYANCES, 3 ed. § 390; *Glover* v. *Lee*, 140 Ill. 102, 29 N. E. 680; *Atlantic National Bank* v. *Tavener*, 130 Mass. 407. A mere moral obligation, however, is not sufficient to support such a conveyance. *Fair Haven Marble & M. S. Co.* v. *Owens*, 69 Vt. 246, 37 Atl. 749; *Cock* v. *Oakley*, 50 Miss. 628. But a conveyance in satisfaction of an unenforceable trust or in settlement of a debt barred by the statute of limitations or the statute of frauds, cannot be attacked by creditors on the ground that the debtor could have set up an unconscionable defense, for the law regards such obligations as subsisting though the remedy is barred. *French* v. *Motley*, 63 Me. 326; *Silvers* v. *Potter*, 48 N. J. Eq. 539, 22 Atl. 584; *Norton* v. *Mallory*, 63 N. Y. 434. See 13 HARV. L. REV. 608. Cf. *Holden* v. *Banes*, 140 Pa. 63, 21 Atl. 239. The decision of the principal case is based on this last proposition. In fact, however, it seems that the conveyance was in satisfaction of a perfectly valid equitable obligation; for where a testator is prevented from revoking a gift in his will by the promise of the beneficiary to hold it for another, the beneficiary becomes liable in equity as constructive trustee of the property received. *Dowd* v. *Tucker*, 41 Conn. 197; *Belknap* v. *Tillotson*, 82 N. J. Eq. 271, 88 Atl. 841. See 28 HARV. L. REV. 237, 379. And if, as the principal case seems to indicate, the estate conveyed represented the proceeds of the bequest, the trust attached to this very property. On this hypothesis, the result of the principal case is more easily reached as property subject to a constructive trust is not subject to the claims of creditors. *Cox* v. *Arnsmann*, 76 Ind. 210. See POMEROY, EQ. JUR., 3 ed., §§ 721, n. 1, 1053.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — JURISDICTION OF STATE COURT OVER SUIT AGAINST INTERSTATE CARRIER WITHOUT PRIOR ACTION BY THE COMMISSION. — The railroad had established certain rules governing car distribution among coal companies for interstate shipments during periods of car shortage. The plaintiff brings suit in a state court complaining that the railroad failed to furnish the quota which, according to these rules, it should have received. *Held*, that the state court has jurisdiction. *Pennsylvania R. Co.* v. *Puritan Mining Co.*, 237 U. S. 121.

Complaints attacking the reasonableness of rates, or the validity of general rules and practices, involve problems of administrative discretion which call imperatively for uniform solution. Over these a single administrative tribunal, the Interstate Commerce Commission, alone has jurisdiction. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Baltimore & Ohio Ry. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481. On the other hand complaint of conduct which contravenes the Interstate Commerce Act as matter of law, and which, therefore, involves no administrative question, may be brought either before the courts or before the Commission. *Pennsylvania R. Co.* v. *International Coal Co.*, 230 U. S. 184. To this rule the principal case adds a further distinction: that a complaint that an existing rule was violated, rather than that it was unreasonable, need not be brought before the Commission. The further holding that it may be brought before a state court presents another problem. Under Section 9 of the Interstate Commerce Act, damage caused by violation of the Act can be sued upon in the federal courts or before the Commission. 4 U. S. COMP. STAT., 1913, § 8573. By implication the state courts are deprived of jurisdiction. *Copp* v. *Louisville & N. R. Co.*, 43 La. Ann. 511, 9 So. 441. See *Mitchell Coal & Coke Co.* v. *Pennsylvania R. Co.*, 230 U. S. 247, 250. But Section 22 of the Act saves all remedies existing at common law. 4 U. S. COMP. STAT., 1913, § 8595. In an effort to give meaning to this proviso, the court holds that for violation of a right existing at common law, but merely reaffirmed by the Act, suit may be brought in state courts. *Cf. Galveston, etc. Ry. Co.* v. *Wallace*, 223 U. S. 481.

MASTER AND SERVANT — ASSUMPTION OF RISK — PROMISE BY MASTER TO EFFECT SUCH A CHANGE IN THE METHOD OF WORK AS TO MAKE THE EMPLOYEE'S SERVICES UNNECESSARY. — The plaintiff was employed by the defendant to carry off waste material. The custom was to throw the waste in sacks from a second-story window into the plaintiff's wagon. The plaintiff objected to this as being a dangerous method of work and the defendant had promised to install a chute which would render the plaintiff's services unnecessary. The plaintiff continued work but was injured before the change was made. *Held*, that the plaintiff cannot recover. *Medlin Milling Co.* v. *Mims*, 173 S. W. 968 (Tex. Civ. App.).

Where a servant continues in employment relying on a promise to repair the defective premises, the defense of assumption of risk is not available. *Clarke* v. *Holmes*, 7 H. & N. 937; *Rice* v. *Eureka Paper Co.*, 174 N. Y. 385, 66 N. E. 979. Although a distinction was attempted in the principal case, it seems clear that this doctrine applies as well to a promise to install a new method as to one merely to repair a defect. *Schlitz* v. *Pabst Brewing Co.*, 57 Minn. 303, 59 N. W. 188. See 4 LABATT, MASTER AND SERVANT, 2 ed., p. 3857. Nor should the fact that the employment involves only simple labor with common implements change the result. *Brouseau* v. *Kellogg Switchboard & Supply Co.*, 158 Mich. 312, 122 N. W. 620; *Louisville Hotel Co.* v. *Kaltenbrun*, 26 Ky. L. Rep. 208, 80 S. W. 1163. *Contra, Marsh* v. *Chickering*, 101 N. Y. 396, 5 N. E. 56; *Webster Mfg. Co.* v. *Nesbitt*, 205 Ill. 273, 68 N. E. 936. But the fact that the promised remedy would deprive the servant of his job presents a question of more difficulty. A variety of technical reasons have been more or less unsuccessfully advanced for the effect attributed to the master's promise to repair. See 4 LABATT, MASTER AND SERVANT, 2 ed., pp. 3874 *et seq.* Such reasons aside, if the only policy underlying it is to enable the servant to retain permanent employment without being at his own risk during the continuation of the promise, then the case is correct, as here the plaintiff must lose his situation anyway. But it is submitted that the principal ground is that of justice to the servant because the master for his own benefit has induced the servant to stay. See *Schlitz* v. *Pabst Brewing Co.*, *supra;* Professor